

1 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP  
A Limited Liability Partnership  
2 Including Professional Corporations  
JAMES M. CHADWICK, Cal. Bar No. 157114  
3 TENAYA RODEWALD, Cal. Bar No. 248563  
379 Lytton Avenue  
4 Palo Alto, California 94301-1479  
Telephone: 650.815.2600  
5 Facsimile: 650.815.2601  
Email: jchadwick@sheppardmullin.com  
6 trodewald@sheppardmullin.com

7 Attorneys for CALIFORNIA NEWS  
PUBLISHERS ASSOCIATION

8  
9 UNITED STATES DISTRICT COURT

10 NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

11  
12 JOSE ALVARADO,

13 Plaintiff,

14 v.

15 MOTHER JONES, LLC,

16 Defendant.

Case No. 4:19-cv-6417 (JST)

**[PROPOSED] REQUEST FOR JUDICIAL  
NOTICE IN SUPPORT OF AMICUS  
BRIEF OF THE CALIFORNIA NEWS  
PUBLISHERS ASSOCIATION**

17 Ctrm: 6, 2<sup>nd</sup> Floor

18 Judge: The Hon. Jon S. Tiger

**REQUEST FOR JUDICIAL NOTICE**

19 California News Publishers Association (“CNPA”) files this Request for Judicial Notice in  
20 Support of its concurrently-filed Application for Leave to File Amicus Brief and Related  
21 Documents and its Proposed Amicus Brief. CNPA respectfully requests that the Court take  
22 judicial notice pursuant to Federal Rule of Evidence 201(b) of the following documents attached  
23 as exhibits to the Proposed Declaration of James Chadwick in Support of Amicus Brief of the  
24 California News Publishers Association (“Chadwick Declaration”) filed herewith:

- 25 • **Exhibit A:** the order entered Nov. 1, 2019 in *Berger v. Imagina Consulting, Inc.*,  
26 No 7:18-cv-08956 (CS), 2019 U.S. Dist. LEXIS 213321 (S.D.N.Y. Nov. 1, 2019)  
27 downloaded from the Lexis case law database (Chadwick Decl., ¶ 4);  
28

- 1 • **Exhibit B:** the decision and order of the United States District Court for the  
2 Southern District of New York entered March 29, 2019 in the case of *Craig v.*  
3 *UMG Recordings, Inc.*, 380 F. Supp. 3d 324, 338-39 (S.D.N.Y. 2019) downloaded  
4 from the Lexis case law database (Chadwick Decl., ¶ 5);
- 5 • **Exhibit C:** the decision and order of the United States District Court for the  
6 District of Colorado entered July 3, 2019 in *Stelzer v. Lead Stories LLC*, No. 19-cv-  
7 00473-PAB-KMT, 2019 U.S. Dist. LEXIS 178345, at \*9-10 (D. Colo. July 3,  
8 2019) downloaded from the Lexis case law database (Chadwick Decl., ¶ 6);
- 9 • **Exhibit D:** the decision and order of the United States District Court for the  
10 Southern District of New York entered February 28, 2018 in *Steeger v. JMS*  
11 *Cleaning Services, LLC*, No. 17-cv-8013 (DLC), 2018 U.S. Dist. LEXIS 32730, at  
12 \*3 (S.D.N.Y. Feb. 28, 2018) downloaded from the Lexis case law database  
13 (Chadwick Decl., ¶ 7);
- 14 • **Exhibit E:** the order entered on March 15, 2018, *Steeger v. JMS Cleaning Services,*  
15 *LLC*, No. 17-cv-8013 (DLC), 2018 U.S. Dist. LEXIS 42797 (S.D.N.Y. Mar. 15,  
16 2018) downloaded from the Lexis case law database (Chadwick Decl., ¶ 7);
- 17 • **Exhibit F:** the decision and order of the United States District Court for the Southern  
18 District of New York entered July 10, 2019 in *Rice v. NBCUniversal Media, LLC*,  
19 No. 19-cv-447 (JMF), 2019 U.S. Dist. LEXIS 114690 (S.D.N.Y. July 10, 2019)  
20 downloaded from the Lexis case law database (Chadwick Decl., ¶ 8);
- 21 • **Exhibit G:** the order of the United States District Court for the Southern District of  
22 New York entered October 9, 2019, in *Polaris Images Corp. v. CBS Interactive,*  
23 *Inc.*, No. 19-CV-3670 (VEC), 2019 U.S. Dist. LEXIS 175618, at \*2 (S.D.N.Y. Oct.  
24 9, 2019) downloaded from the Lexis case law database (Chadwick Decl., ¶ 9);
- 25 • **Exhibit H:** the order of the United States District Court for the Southern District of  
26 New York entered September 18, 2019 in *Sands v. Bauer Media Grp. USA, LLC*,  
27 No. 17-cv-9215 (LAK), 2019 U.S. Dist. LEXIS 160421 (S.D.N.Y. Sep. 18, 2019)  
28 downloaded from the Lexis case law database (Chadwick Decl., ¶ 10);

- 1 • **Exhibit I:** the decision and order of the United States District Court for the  
2 Southern District of New York entered *Ferdman v. CBS Interactive, Inc.*, 342 F.  
3 Supp. 3d 515 (S.D.N.Y. 2018) downloaded from the Lexis case law database  
4 (Chadwick Decl., ¶ 11).
- 5 • **Exhibit J:** the docket in the case *Berger v. Imagina Consulting, Inc.*, No 7:18-cv-  
6 08956 (CS) (S.D.N.Y.) printed from the PACER website of the Federal District  
7 Court for the Southern District of New York on December 14, 2019 (Chadwick  
8 Decl., ¶ 13).
- 9 • **Exhibit K:** a list of cases brought by Richard P. Liebowitz in the Northern District  
10 of California in which Mr. Liebowitz is listed as counsel for the plaintiff.

11 Federal Rule of Evidence 201(b) allows courts to “judicially notice a fact that is not subject  
12 to reasonable dispute because it . . . is generally known within the trial court’s territorial  
13 jurisdiction; or . . . can be accurately and readily determined from sources whose accuracy cannot  
14 reasonably be questioned.” Fed. R. Evid. 201(b). Judicial notice may be taken at any stage of the  
15 proceeding, and the Court “must take judicial notice if [a] party requests it and the court is  
16 supplied with the necessary information.” Fed. R. Evid. 201(c); *Papai v. Harbor Tug & Barge*  
17 *Co.*, 67 F.3d 203, 207, n.5 (9th Cir. 1995) (“Such ‘[j]udicial notice may be taken at any stage of  
18 the proceeding,’ including on appeal; and is mandatory ‘if requested by a party and [the court is]  
19 supplied with the necessary information.’” (citations omitted)), *rev’d on other grounds*, 520 U.S.  
20 548 (1997).

21 Adjudicative facts of which the Court may take judicial notice include “court filings and  
22 other matters of public record.” *Reyn’s Pasta Bella, LLC v. Visa USA, Inc.*, 442 F3d 741, 746, fn.  
23 6 (9th Cir. 2006) (taking judicial notice of parties’ briefs filed in related litigation and transcript of  
24 hearing); *Papai*, 67 F.3d at 207, n.5 (taking judicial notice of decision and order of administrative  
25 law judge); *Nero AG v. MPEG LA, L.L.C.*, No. 10-cv-3672-MRP-RZ, 2010 U.S. Dist. LEXIS  
26 119030, at \*25 (C.D. Cal. Sep. 14, 2010); *Frisch v. Paychex, Inc.*, No. SACV 16-01583 AG  
27 (AGRx), 2017 U.S. Dist. LEXIS 170894, at \*2 (C.D. Cal. Oct. 13, 2017) (taking judicial notice of  
28 “unpublished appellate decisions, which are available on a commercial research database.”)

Exhibits A - I to the Chadwick Declaration are decisions and orders of courts of the United States District Court for the Southern District of New York and the District of Colorado. These documents are publicly available and readily verifiable on the PACER website and dockets for the District Courts, and several have been reported by an official reporter . (See Chadwick Decl., ¶¶ 5, 11, 13, Exs. B, I.) The decisions and orders are also available from the Lexis case law database, from which the copies attached to the Chadwick Declaration were obtained. (Chadwick Decl., ¶¶ 4 - 11, Exs. A - I.) Accordingly, Exhibits A - I to the Chadwick Declaration are proper subjects of judicial notice, and their reliability and authenticity are easily verifiable and cannot be reasonably disputed. See Fed. R. Evid. 201(b). Thus, the Court should take judicial notice of these documents.

Similarly, Exhibit J is a copy of the docket in the case *Berger v. Imagina Consulting, Inc.*, No 7:18-cv-08956 (CS) (S.D.N.Y.) that was printed from the PACER website of the Federal District Court for the Southern District of New York on December 14, 2019. Exhibit J is an official record of the Federal District Court of the Southern District of New York. “A court may take judicial notice of undisputed matters of public record, which may include court records available through PACER.” *United States v. Raygoza-Garcia*, 902 F.3d 994, 1001 (9th Cir. 2018). Accordingly, the Court may take judicial notice of Exhibit J and the orders of the court reflected therein. *Id.*; *Reyn’s Pasta Bella*, 442 F.3d at 746, fn. 6.

Exhibit K is simply a list of cases filed by Mr. Liebowitz in the Northern District of California, obtained by a PACER search and confirmed by a review of the dockets of each of the listed case. The Court may take judicial notice of the filing and existence of these case. See *United States v. Raygoza-Garcia*, 902 F.3d at 1001.

Dated: April 8, 2019

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By                     /s/ James M. Chadwick                      
JAMES M. CHADWICK  
TENAYA RODEWALD  
Attorneys for CALIFORNIA NEWS  
PUBLISHERS ASSOCIATION